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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/674,052 | 10/25/2000 | Ludwig Busam | CM1778Q | 9275 |

27752 7590 05/19/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,052

Applicant(s)

BUSAM ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 4 and 6 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilman et al. (US 5,437,653).

Regarding claim 1, Gilman et al. (hereinafter "Gilman") discloses a laminate web comprising a liquid pervious first material (12) and a liquid pervious second material attached to the first material (20, 22,24), characterized by the first and second material having the claimed effective open area (col. 3, lines 32 – 34) and a plurality of apertures with the claimed effective size (col. 3, lines 58 – 63), said apertures of the second material being aligned with the apertures of the first material (col. 5, lines 9 – 11), wherein said second material has a hydrophilicity which is greater than the hydrophilicity of the first material (col. 6, lines 1 – 3) wherein a plurality of fibers of the first material and a plurality of fibers of the second material are substantially fused together about the apertures (col. 5, lines 26 – 27 and 30 – 31), wherein said first material has a first bonded area and said second material has a second bonded area and wherein the second bonded area is greater than the first bonded area as set forth in figure 1.

Initially, the examiner refers to MPEP 2113 which states:

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"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

The limitation requiring the plurality of materials to be substantially fused together about the aperture is a product by process limitation and only the end structure of the article is given patentable weight.

Secondly, with reference to the bonded areas of the materials, the examiner's position is if the entire bonded area (the length of the article as set forth in col. 3, lines 55 – 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character "18" is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

With reference to claim 3, Gilman discloses a laminate web wherein the first material (12) is a nonwoven web as set forth in col. 2, line 68 to col. 3, line 6.

As to claim 4, Gilman discloses a laminate web wherein the second material (20) is a nonwoven web as set forth in col. 4, lines 47 – 48.

Regarding claim 6, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 15 percent as set forth in col. 3, lines 32 – 34.

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Regarding claim 7, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 20 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 8, Gilman discloses a laminate web wherein the first and second material each have a plurality of apertures with a size of at least 1.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 9, Gilman discloses a laminate web wherein the first and second materials have a plurality of apertures with a size of at least 2.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 10, Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in figure 1.

If the entire width (band as shown in figure 1) of the second material (20) is compared to only the outermost width (i.e., the area to the left of the article in figure 1 where reference character “36” is located) of the first material (12), the second material (20) has a width greater than that of the first material.

Regarding claim 11, Gilman discloses a disposable absorbent article comprising a liquid pervious topsheet comprising the laminate web as set forth in the abstract and in col. 3, line 30 to col. 4, line 47.

As to claim 12, Gilman discloses a disposable absorbent article further comprising a backsheet (16) joined to the topsheet (col. 7, lines 51 – 52), and an absorbent core (22) positioned between the topsheet and the backsheet as set forth in figure 1.

Response to Arguments

Applicant's arguments filed March 4, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a second material having a bonded area greater than a bonded area of an outermost portion of the first material) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Amended claim 1 requires the first material to have a first bonded area and the second material to have a second bonded area and the second bonded area to be greater than the first bonded area. An outermost portion of the first material as argued is not recited in the claim.

Additionally, as previously explained, any bonded portion of the first material may be considered a first bonded area and any bonded portion of the second material may be considered a second bonded area. Therefore, if the examiner considers a larger bonded portion of the second material as the second bonded area than that of the first material, then Gilman meets the claimed limitation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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